

E-FILED on 2/12/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL ARIKAT AND PASIMA
ARIKAT,

Plaintiffs,

v.

JP MORGAN CHASE & CO.; LOWE'S HIW,
INC.; MACY'S DEPARTMENT STORES,
INC.; MBNA MARKETING SYSTEMS, INC.;
MIDCOAST CREDIT CORP.; DISCOVER
FINANCIAL SERVICES, INC.; HOME
DEPOT U.S.A., INC.; SEARS, ROEBUCK
AND CO.; WELLS FARGO FINANCIAL
CALIFORNIA, INC.; FAIR ISAAC
CORPORATION; TRANS UNION LLC;
EQUIFAX INC.; EXPERIAN SERVICES
CORP.

Defendants.

No. C-06-00330 RMW

ORDER DENYING PLAINTIFFS' MOTION
FOR RECONSIDERATION

[Docket No. 156]

On January 15, 2007 plaintiffs noticed a "motion for reconsideration of order dismissing case."¹ Plaintiffs seek reconsideration of a January 5, 2007 order; however, the court did not issue any order on January 5, 2007. The court held a hearing on defendants' motion to dismiss plaintiffs' remaining claims pursuant to Fed. R. Civ. P. 41(b) on January 5, 2007. No appearance was made by

¹ The court notes that plaintiffs failed to follow the civil local rule requirement that leave of court be obtained prior to noticing a motion for reconsideration. Civil L.R. 7-9(a).

1 plaintiffs at the hearing. On January 17, 2007 the court granted defendants' motion to dismiss
2 plaintiffs' remaining claims for, *inter alia*, plaintiffs' failure to file a timely amended complaint after
3 previously missing court deadlines on more than one occasion, non-compliance with court orders,
4 and non-responsiveness to defendants' attempts to contact them. *See* Order of January 17, 2007
5 Granting Motion to Dismiss ("January 17, 2007 Order") [Dkt. 159]. The court assumes that
6 plaintiffs seeks reconsideration of the January 17, 2007 Order as no order issued on January 5, 2007.


7 Plaintiffs first seek reconsideration on the basis that the court's January 3, 2007 Order
8 Denying Plaintiffs' *Ex Parte* Motion to Continue Hearing Date and for Extension of Time to File an
9 Amended Complaint ("January 3, 2007 Order") "said that the hearing of Jan. 5, which it erroneously
10 listed as 'January 4,' was vacated because the court didn't need oral argument. The court obviously
11 made an error in its Jan[.] 3 order by canceling the Jan[.] 5 hearing as 'January 4 hearing,' but it
12 obviously meant January 5." Pls.' Mot. at 1:25-28. This argument provides no basis for
13 reconsideration. The court dismissed the action based on plaintiffs' failure to file a timely amended
14 complaint after previously missing court deadlines, failure to comply with court orders, and non-
15 responsiveness to defendants. Further, plaintiffs' January 3, 2007 *Ex Parte* Motion to Continue
16 Hearing Date and for Extension of Time to File an Amended Complaint was noticed for a separate
17 hearing on Thursday, January 4, 2007. *See* Dkt. 154. In the January 3, 2007 Order, the court noted
18 that "[p]laintiffs seek a hearing on their *ex parte* motion on January 4, 2007 at 9:00 a.m" and,
19 because the court found the *ex parte* motion suitable for disposition without oral argument, vacated
20 the January 4, 2007 hearing date on the motion. Jan. 3, 2007 Order at 2:9-10; 19-21.

21 Plaintiffs argue that the court erroneously assumed all defendants joined in the motion to
22 dismiss. Plaintiffs contend that their first claim for credit libel remains against Macy's Department
23 Stores, Equifax, Inc., Experian Services Corp., and Fair Isaac Corporation because none of these
24 defendants joined in the motion to dismiss. Plaintiffs' argument is contrary to this court's prior order
25 dismissing all claims against Fair Isaac Corporation with prejudice. In addition, defendants Macy's
26 Department Stores, Equifax, Inc., and Experian Services Corp. all joined in the motion to dismiss, as
27 noted in the court's January 17, 2007 Order. Plaintiffs also argue that the case should not be
28 dismissed as to JP Morgan Chase & Co.; MBNA Marketing Systems, Inc.; Midcoast Credit Corp.;

1 and Wells Fargo Financial California, Inc. as only Wells Fargo Financial California, Inc. has
2 appeared in the action and no motions to dismiss were filed by these defendants. However, pursuant
3 to Fed. R. Civ. P. 41(b), a district court has the authority to dismiss an entire action whether or not a
4 motion for dismissal pursuant to Rule 41(b) has been filed by each named defendant. *See Link v.*
5 *Wabash R.R. Co.*, 370 U.S. 626, 629-30 (1962) (holding that a district court may dismiss an action
6 for failure to prosecute or failure to obey court orders even absent a motion by defendants). The
7 court concluded dismissal of the action pursuant to Rule 41(b) was appropriate for the reasons noted
8 above and discussed in the January 17, 2007 Order. Plaintiffs do not raise any "new material facts
9 or a change of law occurring after the time of the January 17, 2007 Order or any "material facts or
10 dispositive legal arguments" not considered by the court. *See Civil L.R. 7-9(b)*. Therefore, the court
11 finds that plaintiffs have not stated any valid grounds for reconsideration.

12 For the foregoing reasons, the court DENIES plaintiffs' motion for reconsideration.
13 Accordingly, plaintiffs' noticed motion date of Friday, March 30, 2007, 9:00 a.m., for a hearing on a
14 motion for reconsideration is hereby VACATED.

15
16 DATED: 2/12/07



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

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14 Counsel are responsible for distributing copies of this document to co-counsel that have not
15 registered for e-filing under the court's CM/ECF program.

16 **Dated:** 2/12/07 SPT
17 **Chambers of Judge Whyte**